

REMARKS

In the above-mentioned Office Action, all of the pending claims, claims 1, 5-15, and 18-24, were rejected. The Applicants appreciate the Examiner's discussion in the Response to Amendments and Arguments.

Claims 1 and 5-14 have been rejected under 35 U.S.C. §101 because these claims are deemed to be directed to non-statutory subject matter. The Applicants have amended independent claim 1 to more clearly indicate the "machine" involved in the apparatus. That is, a computer server having memory and processing circuitry are identified as the structure supporting the logic involved in the performance by the server. The Applicants described the structure, for example, on page 8, lines 5-7 and page 9, lines 6-14 of the specification of the present Application.

Claims 1, 5-14, and 21-24, as well as claims 15 and 18-24, are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0023505 by Eglen et al. ("Eglin") in view of U.S. Patent Application Publication No. 2002/0112235 by Ballou, Jr. et al. ("Ballou") and further in view of U.S. Patent Application Publication No. 2002/0004751 by Seki et al. ("Seki"). The Applicants have amended independent claims 1 and 15 to more clearly state that the stored content creator database identifies content creators who are indexed with historical indicia. The historical indicia include a categorization of the content creators into a group, the categorization dependent upon sales history of another of the content creators' content files. The initial price indicium of the first content file is then caused to be dependent upon the content creator category including the sales

history of another content file by the same content creator. That is, the expected market price of the first content file is established as a result of the content creator's past sales performance, and that is where the apparatus of claim 1 starts the price.

Eglin does not teach this historical sales linkage with the past sales of that content creator's other works that are categorized in a historical sales category with other content creators. Rather, Eglin teaches that "the initial price of a song could be set...depending on whatever the content supplier and/or the administrator using administrative computer 104 believes is appropriate." Paragraph [0099]. Alternatively, Eglen teaches "the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112." Paragraph [0123].

Examiner has pointed out that Eglen discloses a content creator database in paragraphs [0060], [0063], and [0065]. There is no teaching in Eglen that the artist's database 238 is employed in the determination of initial pricing. "The artist table 310 is maintained in the artist database 238 and contains information about artists, authors, performers, directors, producers, and the like." Paragraph [0065]. " The session table 314 stores a unique session ID in field 392 and the username in field 362. The date/time of the session is maintained in field 394. The tables 302 are linked to one another by various fields 316. For instance, the pricing 306 and keyword 308 tables can be linked to the media information table 304 via the media ID field 318. The session 314 and account 312 tables are linked to one another by the username field 362. The artist table 310 can be linked to table 304 via the artist ID field, and the artist table 310 can be linked to the account table via the username field 362." Paragraph [0066]. Inspection of Fig. 3

reveals the described linkages but indicates no linkages between the artist table 310 and the pricing table 306. As a consequence Eglen does not disclose the required initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content creator database.

Thus, Eglen discloses no storage in a content creator database of an indexing of a content creator to a historical indicium, no accessing of the content creator database for the categorized value from the historical indicium, and there is no consideration of the sales history of other content files authored by that content creator in the establishment of the price of the content file to be offered.

Examiner has acknowledged that Eglin does not disclose a categorized value based on sales history of other content files of the content creator and further does not disclose that the initial price is set based on the categorized value. Ballou has been introduced to show disclosure of this missing element. Ballou discloses that categories of movies may be assigned prior to the offering of the movie and based on external ratings ("recent blockbuster" or "old one-star") or other "generic names". See paragraph [0056]. Ballou also discloses that different prices may be charged for the movies based upon the category assigned. See paragraph [0049]. Note, however, that Ballou's assignment and pricing are made based on past history of the content that is being offered. The Applicants have not claimed consideration of such offered content past history in initial price determination. Rather, the Applicants claim consideration of another content file that is only related (by content creator identity) to the content file being offered. Thus, Ballou does not disclose a content creator database with content creators indexed with

historical indicia including a categorized value representative of a category group into which the first content creator is categorized dependent upon a sales history of another content file authored by the first content creator or that the initial price indicia of the first content file is based on the categorized value.

Examiner has acknowledged that the initial price indicia is to be dependent upon the sales history of the other content files authored by each respective content creator is not taught in the combination of Eglen and Ballou, and has introduced Seki to disclose this missing element. Seki discloses an initial price setup table (reference numeral 21, Fig. 3) and states that a dependency element is to be used to determine the price of a product. This dependency element can be a retail sales frequency or a ranking based upon an arbitrary concept such as a popularity ranking. In order to determine popularity of musical pieces, a web site is consulted for a measure of a musical piece's popularity. See paragraphs [0065] and [0005]. The Applicants note that Seki's measure is that of the general perception of, or what the current level of sales is for, that same content that is to be priced. Like the teaching of Ballou, pricing of Seki's content is made based on sales or popularity history of the content that is being offered, not on sales history of other content (that is related by authorship, as Applicant has claimed). Thus, Seki does not disclose a content creator database with content creators indexed with historical indicia including a categorized value representative of a category group into which the first content creator is categorized dependent upon a sales history of another content file authored by the first content creator or that the initial price indicia of the first content file is based on the categorized value.

Moreover, the combination of Eglén, Ballou, and Seki does not disclose all of the claimed elements of Applicant's invention as expressed in claim 1, as described above. Since claim 1 includes elements not disclosed in the prior art, claim 1, as amended, is believed allowable. Independent claim 15 includes elements similar to those of claim 1 and therefore claim 15 is now also believed allowable. Claims 5-14 and 18-24, dependent from one of independent claims 1 and 15, are presumed allowable by virtue of their dependency upon presumed allowable independent claims.

In light of the foregoing, the Applicants believe the present Application to be in a condition suitable for allowance. Accordingly, reexamination and reconsideration for allowance of the claims is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

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